

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 9201 of 2005(U)

OS.70/2002 of SUB COURT,KATTAPPANA

.....

PETITIONER:

K.K.SOMAN, AGED 47 YEARS,
S/O.KESAVAN, RESIDING AT KADAVUMKAL HOUSE,
VATTAPPARA, KATTAPPANA VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.T.I.ABDUL SALAM
SRI.SAJU BHASKARAN

RESPONDENTS:

1. VARGHESE, S/O.MATHAI,
AGED 52 YEARS, RESIDING AT KEERAMPADATHIL
HOUSE, SENAPATHY KARA, KANTHIPPARA VILLAGE,
UDUMBANCHOLA TALUK, IDUKKI DISTRICT.
2. MOLLY, W/O.VARGHESE, AGED 47 YEARS,
RESIDING AT KEERAMPADATHIL HOUSE,
SENAPATHI KARA, KANTHIPARA VILLAGE,
UDUMBANCHOLA TALUK, IDUKKI DISTRICT.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 9201 of 2005(U)

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: PHOTOCOPY OF THE PLAINT DTD. 28.5.2002 IN O.S.NO.70/2002 OF THE SUB COURT, KATTAPPANA.
- EXT.P2: COPY OF THE WRITTEN STATEMENT DTD. 26.6.2002 IN O.S.NO.70/2002 OF THE SUB COURT, KATTAPPANA FILED BY THE PETITIONER.
- EXT.P3: COPY OF THE ORDER DTD. 27.1.2005 IN O.S.NO.70/2002 OF THE SUB COURT, KATTAPPANA.

.....

RESPONDENT'S EXHIBITS: NIL

....

// TRUE COPY//

PIUS C. KURIAKOSE,J.

W.P.(C) No.9201 of 2005

Dated: 10th July, 2007

JUDGMENT

Heard Mr.T.I.Abdul Salam, counsel for the petitioner and Mr.Philip T.Varghese, counsel for the respondents.

2. The order impugned is Ext.P3 in this Writ Petition under Article 227 of the Constitution of India filed by the petitioner who was the defendant in a suit for specific performance and had lodged Ext.P2 counter claim. The learned Subordinate Judge found that the court fee paid on prayer No.D in the counter claim is not sufficient. Prayer No.D in Ext.P2 counter claim was that in the event of the court finding that the suit schedule property is in the possession of the plaintiff, a declaration of the defendants rights over the property and that the agreement for sale dated 25.7.2001 relied on by the plaintiff does not bind the plaintiff schedule property and the same is only a document of security be granted and for a consequential relief of recovery of possession of the property on the basis of such declaration. Relief No.D was valued by the plaintiff at Rs.2,50,000/- being ten times the annual profits from the suit schedule property. Under the impugned order Ext.P3, the learned Subordinate Judge has observed that since declaration is sought for in respect of an

agreement and since the value of the property shown in the agreement is Rs.5.5 lakhs, the market value of Rs.2,50,000/- arrived at in the counter claim cannot be the real market value and the plaintiff will have to pay court fee treating the market value of the property at least Rs.5,50,000/-. Learned counsel for the petitioner would submit that in the nature of the relief sought for in the Writ Petition, it appears to him that relief No.D itself was an unnecessary relief since the other reliefs sought for in the counter claim could be granted by the court even in the absence of relief No.D. The issue as to whether the document in question is a real agreement for sale or whether it has been executed as a security for loan transaction between the parties will even otherwise be an issue in the suit. I notice some merit in the submission of Mr.Abdul Salam. At the same time the question before me is to decide whether Ext.P3 is vitiated to the extent of interfering with the same under Article 227 of the Constitution. The above question has to be answered in the negative since according to me the view taken by the learned Subordinate Judge is based on common sense and also on a just approach. It is not pleaded in the counter claim that the property in question is an agricultural property attracting determination of market value in the

manner the petitioner has done. Thus a question certainly arose as to what was the correct market value of the property. The approach of the learned Sub Judge is justified. Even as I turn down the challenge against Ext.P3, I direct that the interim order of stay will continue for six more weeks from today. It is open to the petitioner if so advised to seek deletion of relief No.D in the counter claim.

The Writ Petition is disposed of as above. No costs.

srd

PIUS C.KURIAKOSE, JUDGE